

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOSE GARCIA,)	
)	
Plaintiff,)	4:06 CV 3053
)	
v.)	
)	
)	
SPEEDWAY MOTORS, INC.,)	MEMORANDUM AND ORDER
)	
Defendant.)	

The parties have again filed a motion for continuing the trial in this case. According to the motion the schedules of the attorneys have precluded their completion of discovery.

This case was removed to this court March 10, 2006. It has been at issue since the filing of the defendant's answer on July 26, 2006. Filing 12. Trial was first set to commence on January 16, 2007, but continued by the court, *sua sponte*, to February 5, 2007. Filing 14. On November 28, 2006, upon the joint motion of the parties, the trial was ordered continued to April 16, 2007. Filing 22. The final pretrial conference is set for March 15, 2007.

The motion cites defendant's counsel's difficulties arising from "various scheduling conflicts" in only recently responding to plaintiff's discovery requests, and both attorneys' "work and travel schedules" in not deposing a former employee of the defendant. However, the file reflects no action taken by the parties after the last continuance until filing the present motion for continuance March 9, 2007, and no other reason for failing to take the deposition of the former employee before now.

The complaint, originally filed in the District Court of Lancaster County, Nebraska on February 8, 2006 (See, Notice of Removal, Filing 1), alleges that the plaintiff had previously filed

an administrative complaint with the Nebraska Equal Opportunity Commission, which, presumably after some investigation, had theretofore found reasonable cause to believe that at least plaintiff's retaliation claim had merit. Filing 1. In other words, some factual record had apparently been created even before the case reached the "litigation" phase on February 8, 2006.

This court's local rules require the showing of "good cause" for the granting of a continuance of trial. NECivR 6.1(a)(2). The pretrial order in this case includes the following:

"... [M]otions [for changes of trial dates] shall not be considered in the absence of a showing by counsel of due diligence in the timely development of this case for trial and the recent development of circumstances, unanticipated prior to the filing of the motion, which require that additional time be allowed."

Filing 11. Generally, the failure to complete planned discovery is not considered "good cause" for a continuance, and particularly where, as here, nothing has been shown to demonstrate "due diligence" in the preparation of the case prior to now.

I shall continue the pretrial conference briefly, but the trial date will remain as currently set.

IT THEREFORE HEREBY IS ORDERED:

1. The joint motion for continuance, filing 23, to the extent that it requests a continuance of the trial setting, is denied.
2. The final pretrial conference is rescheduled to April 2, 2007 at 1:30 p.m. in the chambers of the undersigned.

DATED March 13, 2007

BY THE COURT:

s/ David L. Piester
United States Magistrate Judge